

**TOWN OF KITTERY
PLANNING BOARD MEETING**

Thursday, May 26, 2005

Council Chambers

Meeting called to order at: 6:05 p.m.

Present: Ron Ledgett, Chairman Russell White, Scott Mangiafico, Jerry Solich, Janet Gagner, Megan Kline

Also Present: Mark Eyerman, Earledean Wells, Planner Jim Noel, Town Manager Jon Carter

1. ROLL CALL

Roll call noted.

2. FEES FOR ENGINEERING REVIEWS

The Board discusses the proposal for an administrative process to allow the Planning Department to use outside services for technical review for development projects. The Planning Board does not support immediate implementation of this idea without a more detailed review of the proposal. The item will be placed on the Agenda for a thorough review.

3. DISCUSSION 6:15 - 8:30

The Board discusses the structure of the June 6, 2005, joint public hearing.
See also Action Items 5-26-05.

4. PUBLIC COMMENT ON NON-AGENDA MATTERS (20 MINUTES)

None.

5. PUBLIC HEARING: (CONTINUATION) ATTAR ENGINEERING FOR VERNON CONTINUING CARE HOMES, INC./MEETINGHOUSE VILLAGE. PHASE II, MAJOR CLUSTER SUBDIVISION FOR ELDERLY HOUSING. MAP 8, LOT 41, ZONED URBAN RESIDENCE.

A. Public Comment

Chairman White introduces the matter.

Ken Wood from Attar Engineering introduces himself and says he purchased new easels. He has brought Paul Andres and Attorney Durward Parkinson and Robbie Woodburn, a landscape architect from Woodburn Associates in Newmarket. She has worked with them on projects in

Kittery, on a project similar to this in Wells, and another in Wells. He will be relatively brief and then would like Ms. Woodburn to come up. He went to her and asked for a critique, especially re: trails and how the site works with the natural features and topography. In the plan set is a revised site and grading plan, and also a Phase II plan. The two he has up on the easel are Ms. Woodburn's rendering and his CAD rendering. This is the rendering of the Phase 2 drawing that they are asking the Board to approve tonight. The wetland areas are shown in green, light green, the stormwater buffer areas in a lighter shade of green, the phase 2 buildings in magenta and phase 1 buildings in orange. They also have a revised site plan and grading plan, mainly in response to the issue Mr. Ledgett brought up, the amount of disturbance for the Village Inn and its parking lot in the wetland setback. They moved the Village Inn an additional 26'. They rendered the undisturbed areas in green. It shows the buffer area, about one acre in area before they moved the building. On the prior plans, about 65% of that buffer was undisturbed. Now, about 80% is undisturbed within the 100' setback from the building. Planner Noel also asked him to review the cluster subdivision ordinance with the Board. He had submitted it January 1, 2005. At that time, the Phase 2 construction would have left 92% of the site as open space. With the plans today, about 91% is open space and about 77.8% is usable open space. One of the things that affects it is the emergency means of access to Page Street. They have reduced the number of units and of parking spaces. Originally, they had proposed 235 additional units with 358 spaces. Those numbers have been reduced to 208 new units with 270 parking spaces. What he is hoping to do tonight is to bring this to a vote. He appreciates all the time the members have spent. Every meeting, he feels we kind of almost get there. He respectfully asks the Board to consider moving this project along its way this evening. He would now like to bring Ms. Woodburn up.

Ms. Woodburn moves the drawing up a little bit. She introduces herself. She is licensed to practice in ME. She has been practicing for over 20 years. She does quite a bit of work with ATTAR Engineering, mostly residential. She was called in to walk the site and comment on the appropriateness of the development and look at potential walking trails. It's a lovely site, gently rolling, beech birch woodland for the most part, a benign site suitable for many types of development. She was pleased to see when she looked at the master plan that the majority of the development is centered in the center with buffers around. The buildings are similar in scale to residential development - not big and not, with the exception of one of the buildings, a good scale of building for the site. What is also instructive is seeing the landscape treatment of the existing buildings. She thinks it is very appropriate for what it is. On the whole, it is a good plan. It does draw itself away from the abutters. She did ask Ken what it was zoned for. When she thinks of the fact that it is zoned for urban residential, this plan is highly superior.

Ms. Woodburn says that as far as the trail system goes, there are existing paths that come from offsite and go across the existing site and they are bucolic and it is wonderful to walk through that woodland. They are looking to be able to allow the neighboring abutters and those there now to access that property and be able to go through it as they do now. You can see two or three major access points, one of which is down by the cemetery and the other of which is by Pepperell Green and then coming across the wetland with little bridges that people have made and been using already. In Phase 2, they are suggesting for the most part keeping the trails that are there and linking them into the system. Additionally, they are proposing a second path that comes around the back side of the site, through the wetland, along the wetland. She sees the paths as blaze paths, not graded, but tagged so people can find their way through. She also took a

look at the master plan and what might be built out. On the existing surveys, you see these trails exist. And there is the trail through the wetland which is not on the plan, but which she walked, which has the little bridges. In the end, when they come to build out, there is the trail they talked about in Phase 2 around the outside and the potential for a connection around the wetland, should that happen. They have tried to provide experiences similar to what is out there now and still provide access. She hopes that works for everyone.

There are no questions from the Board.

Mr. Wood thinks it is important to note that this is one type of development that allows access not only to the residents, but also to the abutters and residents of Kittery. With Ms. Woodburn's guidance, that trail system will be an asset. That's all he has. They have tried to answer all the members' concerns. He does appreciate the time and effort that has been spent on it.

Chairman White says that to the extent new information has been provided tonight, he will allow a short public comment period. The new information is the moving of one of the buildings away from the edge of the wetland buffer.

Mr. Ledgett adds that it is also oriented a little differently.

Chairman White says at the last meeting, we had some comments on the Page Street issue. And the paths are a change also. And the reduction in units. If there is public comment that is germane to those changes, the public are welcome to speak on any of them.

Russ Plante lives at 1 Lyndon Way. He had a package that he presented to the Planning Board. He hopes everyone had a chance to read that. He is speaking of the one that he just did that has some pictures in it. He also referred back to his April submission. He tried to show the sections that he is concerned about. Also, there was additional information in there. One of the things addressed at the last Planning Board meeting was the density issue. In that packet, he did do some calculations on that. Enclosure 1 shows that the density in Phase 2 is over 10. He did that just so the Board was aware of the density in just that phase alone.

Chairman White asks for the page number.

Plante says it is in enclosure 1, the last page. There is a paragraph in there that talks about it. He was hoping everyone had a chance to read it over. Page 3, the second paragraph on that page, talks about the individual sections and the entire development. He figured out the acreage and the actual density in that phase. It comes up over 10. There were some comments at the last meeting re: setback. One of the things Mr. Ledgett talked about at the last meeting was the plan. The 3 bullets in the package - The first is wetlands, for which he provides a definition - includes swamps, marshes, and bogs. The next bullet is that the town will continue to regulate the alteration of wetlands greater than 1,000 sf in area and require that development be at the edge of the wetland. The third bullet - wetlands should be considered a severe constraint on development. We need to look back at what the ordinances say and not give waivers to everything. There is another section that says that setbacks apply to structures, roads, everything. Page Street is another issue. The set back from the road should be 10' on each side. If you look at the ordinance, there is no way you can get that putting an access road in there. The ZBA on several occasions said that Page Street could not be used and, on February 28, said that it could not be used as an emergency access. Mr. Bedard said that a number of years ago, this Board said Page Street could not be used. That was from the ZBA. He was not going to go over everything that was in that package. He went over a lot of different items in there. He thinks there is another problem with the four-plex. He thinks the edge of the parking lot still has a problem for the Village Inn. There were things said about the fact that there's basically only one access/egress

road without Page Street and that will cause some problems. Mr. Rossiter said that it would be gated access to Page St. Mr. Rossiter was concerned about the age of the people using it for occasional use.

Chairman White says that it now is for locked, gated use, for emergency use only.

Mr. Plante understands. Chairman Bedard said it was not to be used for emergency access. There seem to be problems with access also to get to that part. The wetlands are of a large size right near there. The other thing is the definition of the wetlands themselves. There are so many questions about them that he thinks they should be re-surveyed. That affects net developable area. He thinks it should be done by a third party.

Beverly Gregory, of 11 Dunlea Ave., says that Gary Reiner, when he did his development, did the same shenanigan of walkways in their backyard and she finds that utterly reprehensible and that is totally unmitigated gall and she hopes that we won't allow them to do that.

_____ had a couple of things that were of concern. The Page Street issue should be a moot point. It was denied and denied and denied, but it still appears in the plans. We should look at whether there is sufficient water for the project. He believes that was discussed and he would like to hear the Board's opinion on that. In the packet that Russ provided, one of the things that still gives him concern is the walking paths - bridges through wetlands and open to abutters. On page 6, it speaks about the lack of surveys done by various departments. Satellite photos and hearsay don't cut it. He thinks they should be down and look at it and they would agree that there are more than just people on those paths. He thinks that turkeys, deer and fox live there and should be taken into consideration. There is one other thing that he can take either way. Ms. Woodburn's presentation of what could potentially be in there. He guesses we're lucky or it could be worse. He doesn't know how to take it. He thinks less is more and thinks there are a lot of valid points that have still not been answered. He thinks they have been here a lot of times on this project because there are so many problems with the project.

Cathy Plante agrees.

Nicholas Pesarik agrees with everything that has been said, including about the misinformation that has been provided. Someone will be down from inland fisheries and wildlife to look at the site shortly. He would like to reiterate what has been said about Page Street. Eventually, it's just going to be full access through Page Street the way they push and push and push the rules to the limits. The applicant has an unfair advantage over the people that rent around the area. He can't even live in that area. The real estate person went way off the deep end and distorted the facts as usual. He thinks the Board should just put it to a rest and say enough is enough.

Donald Coats owns property on Page Street that he uses as rental property. He does not use Page Street every day. He just goes there occasionally. Every time he goes up that hill or around the corner, he is afraid that he will meet someone coming down it too fast. The town has turned it down as an access several times and he thinks it is time that make a firm stand and say no to using Page Street as an access.

Chairman White reads a letter from the Kittery Conservation Commission Chairman requesting that conservation easements be implemented on the wetlands with language prohibiting buildings and structures, soil disturbance, and plant disturbance. He asks if the Conservation Commission has model language to suggest.

Ms. Wells says no.

Chairman White says the letter will go into the record. The letter also thanks the applicant for moving a couple of invasive species and showing concern that the stormwater treatment facilities

are inadequate.

Mr. Wood says that, first of all, it's kind of entering the realm of hearsay on the ZBA. Everyone is quoting Chairman Bedard.

Chairman White did not ask folks to stop talking about that, but would like Mr. Wood's response to that to be brief.

Mr. Wood spoke to Chairman Bedard about refile for ZBA approval. He was told by Chairman Bedard that as far as Chairman Bedard knew, he thought the ZBA approved Page Street for emergency access and did not see it as a problem. The applicant plans on filing that with the ZBA as soon as this application is approved. Regarding the letter from Mr. Rossiter, Mr. Wood contacted him, and Mr. Rossiter thought it was acceptable to use Page Street for emergency access and occasional use. He feels it can be used for occasional use. That is not what the applicant is proposing. Mr. Wood does not know how Mr. Plante did his density calculations. If he used the phase lines, it is incorrect. The phase lines show which buildings will be constructed. The phase lines do not show the perimeters of the entire parcel. That does not mean that the remainder of the lot just goes away. He has given the open space counts if all phases were built and they exceed the requirements of the ordinance. As for the ECC's request, he has no issues putting those into conservation easements. He would use the model language from the DEP site development standards. There would be no disturbance. He would send the proposed easements to the ECC for review prior to recording them. He corrects himself - KCC, not ECC.

Chairman White asks with respect to the density calculations, Mr. Wood's calculation as to phase 2 is what?

Mr. Wood would include 1 and 2.

Chairman White asks if it is a cumulative density calculation.

Mr. Wood says yes. The cumulative density of all units is 5.9 per acre if all future expansion is done. For one and 2, it would be 2.5 units per acre of net developable.

Chairman White asks Mr. Plante what he was using to get his figures.

Mr. Plante says Mr. Wood is using the entire acreage.

Chairman White wants to know what Mr. Plante used.

Mr. Plante says that when it was discussed at the last meeting, he wondered what the whole project would be. Someone asked what it would be if we did each individual phase and Mr. Plante thought that was an interesting question. He did it on how the phase lines are drawn for phase 2 only. He did not do it for the whole plan. That probably comes out to six point something or somewhere in that range over what the ZBA would recommend considering - 4. It is very dense in that one area of land where they are putting those buildings.

Mr. Wood wants to be clear that the phase lines are not drawn around any portion of the property. It's just that phase.

Chairman White asks if there is any more public comment on new aspects.

There is none.

Public comment is closed.

B. Board Deliberation

Mr. Ledgett says there are three issues we were working on. One was the buffer, which has been addressed. The second was the emergency access. The third was the cluster considerations,

particularly, as he recalls, Mr. Mangiafico was pursuing this issue and the concern was how to handle cluster development requirements and progressive expansion of this development. Do we get ourselves in a box where you can't meet the cluster development requirements because of something we've done in the approval? As he understands it, that's the question.

Mr. Mangiafico thinks the fact that they have pulled out a lot from the area of the wetland setback is a step in the right direction. We are looking at phase 2 here and assuming that they will want to go further. He wants to make sure that we don't lose something right off the bat that we will want to maintain. He thinks that they have addressed some of the issues that he had and he still has some questions. He suggests we deal with the buffers first. He thinks that the Kittery Conservation Commission is requesting that we have some language in there re: conservation easements.

Mr. Ledgett says they are marked.

Mr. Mangiafico says that two areas are being proposed for a conservation easement. He suggests that we take their suggestion and have them adopt language that is acceptable and reviewed by the Conservation Commission for those areas. That would be the condition. He's a little unclear on the reference that 80% of the setback will be undisturbed.

Mr. Ledgett asks how the 80% is calculated. He wants to make sure he understands what area is in the calculation.

Mr. Wood says it is pretty much the areas within the two edges of the grading limit. This area is about 80% of the total setback. The stormwater buffers area is a little different. They use those for providing treatment in accordance with the BMP manual and put those into a covenant and restriction document so they are not to be disturbed.

Mr. Mangiafico says, so, to get to the 80%, what you are looking at is the phase 2 line. That is your area of disturbance?

Mr. Wood says, yes, it is between the dot dash line and the area of the wetlands and the silt fence is just slightly below that dot dash line. That's the limit of disturbance.

Mr. Ledgett asks if the undisturbed buffer should be in the conservation easement. Right now, it's the wetland boundary. The idea is not to disturb any of that stuff in the green. And a portion of that is already in an easement, right? The idea is not to do anything in that zone. The question is whether it is appropriate to put it in a conservation easement or not.

Ms. Kline says that's the DEP easement.

Mr. Wood says the stormwater buffer is a recorded easement.

Mr. Ledgett asks if that is the little piece here, some fraction of the 80%.

Mr. Mangiafico asks if we want some of the upland area in a conservation easement.

Mr. Ledgett asks what is to be done with respect to what was colored in green.

Mr. Mangiafico says he is talking even beyond that.

Mr. Ledgett says that is what he is talking about.

Mr. Mangiafico says that the last cluster we did for a senior development had a lot of the upland area in conservation easement.

Ms. Gagner asks Mr. Wood to show the buffer again.

Mr. Wood shows it and explains.

Mr. Ledgett says that in the lower green portion is the DEP piece.

Ms. Gagner asks what grading line the buffer starts on closest to the building.

Mr. Wood says it's on elevation 72.

Ms. Gagner asks and it goes down to?

Mr. Wood says no, I'm sorry; it goes up. 88 is at the top of the slope closest to the building.

Ms. Gagner asks where the green begins.

Mr. Wood says at elevation 72.

Ms. Gagner says and then it goes down to....

Mr. Wood says 64 on the high end. It is following the wetland line.

Mr. Mangiafico says that it is the wetland line on the top and on the bottom, it is the silt fence.

Mr. Ledgett says that there is always this confusion over buffers.

Mr. Mangiafico says that he has not used the silt fence. He's used the limit of disturbance as the phase line.

Mr. Ledgett says the silt fence is slightly below that.

Ms. Gagner asks if what he is saying is that for the DEP, the only easements he had to do are the two in the block or dark line.

Mr. Wood says that is all that they had to do. Anything done in the wetland would require permitting from the DEP.

Ms. Gagner is just trying to understand where we are.

Chairman White asks if we are going to expand the conservation easements to include portions of the buffer. Is that what is being proposed?

Mr. Ledgett says the question is whether this developer has any concerns about doing that. As he understands it, nothing is supposed to happen there anyhow.

Mr. Solich asks about whether this is a covenant that these will not be disturbed.

Ms. Kline asks whether it will be included in the conservation easement.

Chairman White says that what they are talking about is not an easement, but a covenant not to build or disturb with a note on the plan so that it's in the registry.

Mr. Ledgett says then if it comes back in the future....

Ms. Kline says there are drainage easements that occur on the property. Sometimes easements are conferred on another entity, but they don't have to be.

Attorney Parkinson says that it would be a covenant of no build or disturbance.

Ms. Kline says that he would know better.

Attorney Parkinson says it would be right on the plan.

Chairman White says that they can do an easement to the Kittery Land Trust or the town.

Ms. Kline says that a conservation easement can be held by the owner.

Mr. Wood says that he thinks Mr. Ledgett is looking for a recorded document that says there'll be no disturbance within that area.

Chairman White says that we don't appear to disagree on this issue except on the semantics.

Mr. Wood indicates that he would agree to this as a condition of approval and it would be noted on the plan.

Chairman White says Mr. Ledgett mentioned three issues to get us started. We talked about buffers. As for the emergency access question, he had a couple issues on that.

Mr. Ledgett asks if we are done with buffers.

Ms. Gagner thinks that the DEP buffer easement areas should be included with ours if there is a way to do that.

Mr. Mangiafico says that any areas that are not in the phase are going to be shown as no cut areas.

Chairman White says that the wetland areas will be protected with permanent recordable covenants. Those should happen now. The existence and location of the DEP areas should also

appear on the plan.

Ms. Gagner would like them included as Kittery Conservation easements as well.

Chairman White says that the covenants will encompass that land area as well. His question on Page Street: The access road is an existing woods road now, correct? What improvements will occur? Will it be a 16' or 18' gravel road?

Mr. Wood says Mr. O'Brien would like a 16' gravel road that is maintained year round. That may require replacement of the culvert. That's pretty far gone. He does not think it would support the town's fire trucks in its current condition.

Chairman White asks if he has seen Mr. Plante's pictures.

Mr. Wood says yes.

Chairman White asks if we are creating any side slopes.

Mr. Ledgett asks if there is a wetlands issue.

Mr. Wood says that they would want to replace the culvert and do that during a time of year when there was no water in the culvert. They would put a silt fence down on both sides and the actual crossing would be wider than the woods road. It's the extension of Page Street.

Mr. Mangiafico asks about the impact on the wetland.

Chairman White says it crosses the wetland now.

Mr. Wood says that there should be a foot of cover over the culvert and there is not now, so that would change.

Chairman White says that would create a bit of a side slope.

Wood says would steepen up the side slopes to 1 and 3/4 to one.

Mr. Mangiafico says that if he increases the width, he needs a wetland crossing.

Mr. Wood says they will keep same width.

Chairman White would like a note on the plan that the course of the road will not be widened beyond the requirements of the fire chief and would like it to state what they are.

Mr. Ledgett asks if 1001 applies here because of disturbance in that area.

Mr. Mangiafico says Mr. Wood is saying there will be no disturbance - that all disturbance will be upland.

Mr. Wood says that is correct.

Mr. Mangiafico says that the only disturbance would be replacing the culvert, which would be maintenance.

Mr. Ledgett reads from it that it is repair and maintenance of existing structures with a limitation of 10 cubic yards. You can't just replace anything. He is looking at page 281. The permitted activities are explicitly listed in paragraphs A through L - those permitted without a wetlands permit. You can repair and maintain, provided the existing wetland hydrology is maintained and there is removal of 10 cubic yards or less. Any time you are talking about fooling around with replacing a culvert, you are talking about 10 yards.

Chairman White asks about I.

Mr. Ledgett says that is repair and maintenance of existing drainage facilities.

Chairman White does not think that a permit is needed. The culvert does not work at this point.

Mr. Mangiafico thinks that I works as long as the applicant is not going into the wetland with the side slopes.

Mr. Ledgett is satisfied with that.

Chairman White asks Mr. Mangiafico for his thoughts regarding the cluster issue.

Mr. Mangiafico says the applicant has agreed to put areas into conservation easement, or

whatever he will call them. This would include the wetland buffer. The upland area will be designated as no cut.

Chairman White asks if we are going back to what we were discussing about recordable covenants.

Mr. Mangiafico says yes. He thinks that is part of what we look at.

Chairman White says the applicant is putting in the wetland areas colored in, the DEP areas that exist, and the required buffer areas. They weren't proposing to put the buffered areas in until tonight. They are increasing the acreage that is protected.

Mr. Wood adds the amounts for the Board.

Mr. Mangiafico suggests he go into Phase 1 and take the area within the wetland setback and add that to it, too. Presumably, most of that is already disturbed, but replanted. He is referencing the area to the left of the wetland.

Ms. Kline asks where he is looking.

Mr. Ledgett says he is talking about swinging around and picking up the other crescent.

Mr. Mangiafico says that he presumes that except for maintenance, they don't have to go in and disturb that at this point.

Mr. Ledgett says that is the same logic we would use in a full cluster.

Mr. Mangiafico says that he is just setting aside the areas that would not be disturbed in the future.

Chairman White thought Mr. Mangiafico was alluding to the remaining land not built upon in this Phase. He would not suggest a covenant, but rather a note on the plan that says no removal of vegetation except for the creation of paths or to remove hazards until further review or something like that. He would like just some assurance. He thinks the applicant could clear-cut this under our ordinance without permission from anyone.

Ms. Kline thinks that he would need a permit.

Mr. Ledgett says they would not because it would not be within the shoreland zone.

Chairman White thinks that is not the applicant's intention anyway.

Mr. Wood says it did not cross their mind.

Attorney Parkinson says it will say that it will remain forever wild.

Chairman White says it addresses Mr. Wood's concern that if he is coming back for more buildings and wants it to be seen as a cluster development, he will have preserved what he needs to make it so.

Mr. Wood says that there will be no further cutting or removal of vegetation other than to maintain the trails.

Mr. Ledgett says the driver behind this is to do cluster development and follow the code for it down stream.

Chairman White says we also need a note on the plan that the access to Page Street will be used for emergencies only, will have a locked gate, and that the road will be maintained throughout the year.

Ms. Gagner says that for fire gates, you like to have maintenance of the gate as well.

Chairman White says the road and gate are to be maintained.

Ms. Kline asks if it needs to be for the future.

Chairman White and Mr. Ledgett say that we need to do it now or we will be back to the argument over trip ends.

Mr. Wood says it is already on the plan that the designated area will be deeded to the Town and

he shows where it is.

Chairman White says that one abutter has raised concern over the location of walking paths adjacent to any interested abutter or that run by a property line or home. He would like the applicant to allow that abutter to have some input. There may be a way to move the path or allow vegetation. There may be a way to do that to mitigate a loss of privacy. He would like the applicant to mark a proposed path and then walk it with the individual. There may be a way to pull the path away from the property line.

Mr. Mangiafico asks if the path could follow the roadway and then go to the other parking lot.

Ms. Woodburn says it would not be very natural.

Mr. Mangiafico says yes, it would be straight. However, if someone walks from the back part of the parking lot, the person may want to get to the other lot.

Mr. Solich says the path is not even a natural path. It is on the plan because other residents want to walk through the area. They are doing it for the residents. If they don't want it, take it off.

Mr. Wood says it is no different from what is there now.

Mr. Ledgett says that on our last site walk, when we got lost, we walked that path.

Ms. Woodburn shows this is a retention area and right in there is a steeper slope and the idea was to skirt around it, get to the high point and come back down. She can bring it down the lower edge, but it's not as pretty.

Ms. Kline says that one of our jobs is to buffer the residents that have concerns. If that works for you, then it's a real easy solution. Just find another way to keep it.

Ms. Woodburn shows another way to do it.

A resident says that they should get that path out of their backyards.

Ms. Woodburn says there are people walking around down there all the time right now.

The resident says you don't know. You don't live where we live. You don't see what we see.

Mr. Pesarik says that where they are proposing that path on the high land, that's the only place that they could put that thing possibly. You get down in the bottom and it's soft and soaking wet. You can't walk down there. You get your feet wet. It's always wet.

Chairman White says we are not going to get too off track with this.

Mr. Pesarik says that he wants them to know about this.

Mr. Ledgett says that is not a path. It's the natural place that you walk in that area. You follow that path or you get your feet wet or storm a steep hill.

Mr. Mangiafico says that if there was a path on the other side, then we might not have ended up in their back yard.

Chairman White says that the applicant needs to pull away from the abutter and make sure their privacy concerns are addressed.

Mr. Pesarik asks to make one more comment regarding what Mr. Mangiafico said. The upper path is the most used path and the other ones don't even get used.

Planner Noel says that they need to check the time.

Mr. Mangiafico moves to extend the meeting to 10:30 pm.

Mr. Ledgett seconds.

All in favor.

Chairman White says he has a couple general things that he wants to address, such as the water sufficiency issue. He asks the Planner if there is sufficient water.

Planner Noel believes there is letter from the Water and Sewer Department saying that there is sufficient capacity.

Chairman White says that Mr. Plante cited a letter from the Fire Department. Is Planner Noel aware of the fire chief saying there is insufficient water?

Planner Noel says no.

Mr. Wood reads from a letter stating that there is sufficient water capacity.

Chairman White asks if the Board wants to address anything to do with the issue on density calculations or if the Board is satisfied with what has been presented.

Ms. Kline says she has struggled with this.

Chairman White is really just asking whether, looking at the evidence before us, we can rely on what's been presented by the applicant. Is that more reliable than the other evidence that has been presented?

Mr. Ledgett says there is no conflict. The main question is what the code intends. Go to the definitions and he thinks he can answer that question. He references net residential acreage and density, page 222, top of the page.

Ms. Kline says that when the peer review was done, they also quoted directly from the ordinance on this. You look at the gross area minus the area required for streets or access minus areas of site suitable for development with respect to the whole site. You have to do a net residential acreage calculation.

Chairman White says the question is does it meet it today.

Ms. Kline says that is if you are using the whole parcel. If you are only limited by the outline of Phase 2, then how do you do this? You don't want everything crammed down into one corner unless you are going to have a parkland for the rest of the acreage. The applicant has to look at whether they want to have the development be like this. They've made some big adjustments during the process. They have open space requirements and things they have worked through doing. The other argument that comes in is the net residential density. They also had a discussion with the ZBA and got a conclusion from the ZBA and have some conclusions to make about where they will proceed from here.

Chairman White does not want to be too narrowminded, but if it works for this proposal here and we feel also reasonably assured that the cluster requirements could be met in the future, that there are enough land and natural features preserved to meet the cluster requirements in the future, and we are asking for a note on the preservation of those features....

Ms. Kline says that she knows a lot of the members of the public have reviewed this. Through this process, the applicants have to keep in harmony with the features of the land, the water, and development. As they encroach closer to single family development, they have a responsibility to create a buffer or neutral area as best they can and the Board and the town help them with this.

Mr. Ledgett says the density will take them into a cluster development the next time.

Chairman White wants the Board to take note of Mr. Plante's hard work and his memos. Has raised a lot of issues over time. He has been very thorough. Chairman White is very impressed with his work. Some of the issues he has raised have caused the applicant to make substantial changes in the proposal, or at least the application has moved in a way that addresses these points. Chairman White looked in the file and did not see a water issue. Chairman White looked at the traffic issue and the numbers do not trigger the need for a traffic study, in his opinion. The other issue is conformity with local ordinances and plans. Those are the types of issues that the Board has to address. After hearing all this for many meetings, considering it, looking at the Comprehensive Plan, and deliberating, our judgment will be reflected in how we vote. It is certainly true that in the permitted uses on this that aren't special exceptions, a greater density of

development could occur, Chairman White believes, than what is proposed. He does not think that if there was a comment as to that, it was meant as a threatening or negative comment. We use that as a bench mark where we are with the proposal that is before us. He thinks we have discussed cluster and thinks that the water treatment issues have been extensively reviewed and the purpose of the water treatment design is to have the least possible negative impact on groundwater. He thinks that is the intention - to filter and treat the runoff and address those concerns. In terms of the mapping of small wetlands, vernal pools, and a more extensive inventory of wildlife, what he would say is that he has no indication that the original information was wrong. He thinks that there may be some areas that aren't designated, but that they aren't large wetlands. And he thinks there is quite a bit of area that is not being built on that may be back before us. That may be time to remedy the inventory.

Ms. Kline would like to say regarding the wetland that although this does not involve this phase, assuming the applicant is coming forward to the Board again, sensitivity to that section of the development would also be helpful.

Chairman White says there are future opportunities to remedy this. He asks whether the applicant will be re-flagging wetlands and whether a wetland inventory has been arranged.

Attorney Parkinson says that will happen as soon as he gets back from vacation.

Ms. Kline says that also helps with complying with the cluster ordinance.

Chairman White asks how the applicant will deal with stumps, etc., as Mr. Plante indicated that they were being disposed of on site.

Mr. Wood says that he would use them on side slopes, but not under roads. The stumps can be ground and turned into bark mulch for a barrier, as opposed to a site fence. The other excess stumps would be hauled off. They would not be burnt.

Chairman White asks if the Board has any other issues. He asks for a reminder on the waiver situation. He thinks that we dealt with them a while ago.

Mr. Ledgett asks if there are any outstanding waivers.

Chairman White says the endorsement waiver, street length, and sidewalk material.

Mr. Wood says that when the endorsement waiver was discussed, the Board felt favorable toward it.

Chairman White asks if the Board wants to discuss the street length waiver.

Mr. Mangiafico does not see that as a problem.

Chairman White says it is not with a secondary emergency access. Chairman White asks where the road would end.

Mr. Wood provides confirmation as to where it ends.

Mr. Mangiafico says that when we were talking about pavement and a sidewalk, we talked about putting in stone dust. What plan shows that happening? He is assuming that at the first duplex, there is no parking there now.

Mr. Wood says there is.

Mr. Mangiafico asks if there is room for a sidewalk there now. He asks if there is a walkway there now?

Mr. Wood says that is correct.

Mr. Mangiafico assumes that it is doable.

Mr. Wood plans to connect the walks.

Chairman White says there may be more to discuss, but he would entertain a motion to approve the waivers.

Mr. Mangiafico moves to approve the waivers as noted on Note 12 on the Plan for Meetinghouse Village drawn by Attar Engineering, tax map 8, lot 41, a site subdivision plan: 1. 1636.060.b.3.1, endorsement of plan by York County Soil and Water; 2. second waiver 16.32.10, figure 1, street length, noting that street length would be 1,370 feet where a maximum of 1,200 feet is allowed; 3. 1632110 sidewalk material where they are asking for a temporary waiver not to exceed 5 years for stone dust where asphalt pavement is required for portions adjacent to phase 1 only.

Mr. Ledgett seconds.

Mr. Ledgett suggests amending the motion to have the description of the Plan say that it is C1.2.

Mr. Solich says and the date.

Mr. Mangiafico says so noted - it's amended to read Plan C1.2.

Mr. Ledgett says and it's revision dated 05-11-05.

Mr. Mangiafico adds that to the motion as well.

Chairman White asks if there is any other discussion. Hearing none, he asks for all in favor of granting a waiver.

All in favor. None opposed.

Chairman White asks if there are any other plan issues beyond the waivers.

Mr. Ledgett asks what he means by that.

Chairman White says anything else.

Mr. Solich asks what we have as conditions right now.

Chairman White says Mr. Mangiafico has been writing them down. He can tell what he wrote: 1. ZBA approval, 2. Record all covenants including the designated wetland areas and the buffers and including wetland areas in phase 1 and the DEP buffers. Also include language regarding "no cut and disturb" using the DEP model. This is to be reviewed and approved by the KCC. 3. Any new walking paths located adjacent to abutters are to be designed in consultation with the abutters to address their privacy concerns. 4. Provide a note on the plan, which may already be there, that the Page Street access is allowed for emergency access only, with a locked gate, and the gate and roadway are to be maintained year-round.

Mr. Mangiafico suggests putting a note on the plan that the 16' gravel emergency access and gate will be maintained year-round for emergency access and the upgrade of the road will not encroach any further upon the wetland.

Chairman White says that sounds much better. He asks Mr. Mangiafico to read the rest of what he has.

Mr. Mangiafico declines, saying he likes what Chairman White had on the first couple.

Mr. Ledgett asks about a requirement of no cut on the remaining land.

Chairman White says that was note 6 - as to the remaining lands, there will be no removal of vegetation without Planning Board review except for the maintenance of the road, the proposed road, the trails, and the removal of hazards.

Mr. Ledgett says those are the ones he had. He asks if that is what Mr. Mangiafico has.

Mr. Mangiafico says yes, but his was not as eloquent. He suggests doing a combination of the two. He asks how many sheets we have here.

Chairman White asks how many we have in total. We have three new ones.

Mr. Ledgett says that we need to be careful which ones we have. Are we going to be approving all of the plans?

Mr. Mangiafico says we will approve Phase 2.

Ms. Kline says they are revised plans dated May 11, 2005.

Mr. Mangiafico says it is just three sheets, right?

Chairman White says that two of the three have the future expansions on them.

Mr. Mangiafico says that we are approving all three, but only Phase 2 of the subdivision. If you look, some of the stuff is not included in Phase 2 only.

Mr. Solich says it is in the first note - approval for Phase 2 only.

Mr. Ledgett says there are a number of detail plans in this set as well. Are we doing anything with those? They show details of the roads and grading.

Chairman White asks if there were revisions to the detail plans as well.

Ms. Kline says not yet.

Mr. Ledgett asks what our normal procedure is in a situation such as this.

Chairman White says that we usually reference the primary plan and whatever the attachments are. We have three revised plans all dated 5/11/05. And then we have the prior detail plans. We would be essentially incorporating those of most recent date.

Mr. Ledgett says there is one plan in there that is just Phase 2 that has no date.

Mr. Solich says it does have a date, but it has no revision date.

Mr. Ledgett agrees, but it has no number designated. It's a stand alone and doesn't go in the set.

Ms. Kline says there is also a sheet C1 from before.

Mr. Solich moves to extend to the meeting until 10:40 pm.

Mr. Ledgett seconds.

All in favor.

Ms. Gagner asks if we have 218.

Ms. Kline says that have 218 C1.4.

Mr. Mangiafico says that is the only one.

Ms. Kline says that's fourth, that's the detail plan.

Mr. Wood says there is also the soil survey.

Ms. Kline says we used that one a lot.

Mr. Ledgett says that is C1.3a.

Chairman White asks for someone to write a list of the detail plans and we will add it during discussion.

Mr. Mangiafico says that having reviewed the proposed development, he moves that we find it in substantial compliance with the Comprehensive Plan, the Kittery Land Use and Development Code in general and specifically 16.36.070.c and Article 12, Conservation of Kittery Wetlands Zoning. He moves that we approve the site subdivision plan for Meetinghouse Village for Vernon Continuing Care Homes, located at 143 Rogers Road, Tax Map 8, Lot 1, on a plan drawn by Attar Engineering, plan dated 7/17/03, latest revision 5/11/05, with site subdivision plan C1.2, Phase 2 Meetinghouse Village plan, grading plan C1.3, detail plan C1.4, revision date 2/18/05, site and grading plan for a revised exit dated 1/15/05, revision 1/31/05, with the following conditions:

- 1. That the applicant receive ZBA approval.*
- 2. That the conservation easement be provided. That recordable covenants be provided with respect to the designated wetlands and buffer areas in Phase 1 and the DEP buffer areas and be approved by the Kittery Conservation Commission using the DEP model language.*
- 3. That walking paths adjacent to the abutters' properties be located and designed in consultation with the abutters to address their privacy concerns.*
- 4. That there be a note on the plan stating that the 16' gravel access and gate will be maintained*

year-round and that the upgrade of the roads will not encroach any further upon the wetlands.

5. That the remaining land not designated as being disturbed in Phases 1 and 2 will be noted as “no removal of vegetation except for road, trail, and hazards.”

6. And that the Chairman would sign the Plan for the Board upon approval.

Mr. Ledgett seconds for discussion.

Chairman White says that we may want to add....

Mr. Solich made a list. C1.2, C1.3

Ms. Kline says we need to have the dates.

Mr. Solich says those are both 5/11/05.

Mr. Mangiafico already has C1.2 and 3 done.

Mr. Solich asks if he has 3a.

Mr. Mangiafico says no.

Chairman White asks for dates.

Mr. Ledgett says 3.a is dated 01/05/05.

Ms. Gagner asks what it is.

Mr. Ledgett says it's the entrance.

Ms. Gagner thought we had that.

Mr. Ledgett shows what it is.

Mr. Mangiafico thinks we had it, but he did not put a number to it.

Mr. Solich asks the number he has on it.

Mr. Mangiafico did not see a number on it. He called it the revised entrance/exit.

Mr. Ledgett says this is numbered 1.3.a and dated 01/05/05.

Mr. Mangiafico says that is an old one, right?

Ms. Gagner asks if you look to the left, is there a handwritten date?

Mr. Mangiafico says that the revision handwritten on it is 01/31/05 and he noted both dates, but he did not give a number to it because it did not show a number on the plan he was looking at.

Mr. Solich says C1.4, dated 2/18/04.

Mr. Mangiafico says it is dated 7/17/03 and the revision is dated 2/18/04. He included that one. Actually, the revision is dated 2/18/05.

Mr. Solich says C1.4.a. It is the pond detail plan.

Mr. Mangiafico does not think it applies because he does not think we are doing anything with that plan.

Ms. Kline says it is the retention pond.

Chairman White asks for the date.

Mr. Ledgett says the original plan was dated 7/17/03 and it was revised 2/18/04.

Mr. Mangiafico has 7/17/03 for his original date.

Mr. Mangiafico would amend his motion to include the pond detail plan, sheet C1.4a dated 7/17/03, revision date 2/18/04.

Mr. Solich says C1.5, then corrects himself. Nope. That doesn't apply. That's the proposed wetland crossing.

Ms. Kline says we have sheet C1.8 which is the existing conditions.

Mr. Mangiafico would amend his motion to include C1.8 existing conditions, dated 2/25/04. There are probably no revisions to that.

Mr. Ledgett says there is a lot designation plan, C1.7 that is a survey.

Mr. Mangiafico amends his motion to include C1.6 and C1.7 that is a lot survey, 5/24/1993 for

both of them.

Mr. Ledgett says C1.8.

Mr. Mangiafico says that we have that one.

Mr. Ledgett asks if we have C1.9 - the proposed conditions plan for South Campus.

Ms. Kline says this is from 1993.

Mr. Ledgett asks if it has any relevance anymore.

Chairman White says that we have been taking notes and should look at the plan set and make sure it is complete because otherwise that motion would have to be amended he thinks at the next meeting.

Mr. Wood says the last one is C1.10 the soil survey, dated 8/21/03, no revision.

Mr. Ledgett asks about C2.1.

Mr. Mangiafico would add C1.10, soil survey, dated 8/21/03.

Mr. Ledgett says there is one more plan, C2.1, that shows the parcel and all abutters. The original date is 2/11/01, signed 6/01 and no revision.

Ms. Kline says that is from a previous approval.

Mr. Mangiafico says that we don't need to include that then.

Ms. Kline and Chairman White agree.

Chairman White asks for a second for the ones listed.

Mr. Solich seconds.

Mr. Mangiafico has a question on the second one. He asks if it included the wetlands and wetland buffers designated not to be disturbed and the DEP buffer areas.

Chairman White says it includes that and the buffer areas in Phase 1. There are more things that are included.

Mr. Solich knows there is a motion on the table, but he moves to extend the meeting to 10:55 pm to give Planner Noel time to speak.

Mr. Ledgett seconds.

All in favor.

Mr. Mangiafico wants to make sure we have all the areas in there - wetlands, wetland buffers, Phases 1 and 2, also the DEP buffer areas in there. The Chairman signs for the Board. That's included.

Mr. Solich asks for findings of fact.

Chairman White says that is after.

Ms. Kline needs to make one amendment. With respect to note 7, erosion controls, where it says that the control measures will be a silt fence, she would like to include "or an appropriate alternative" wood chips could also be used. Otherwise, the code enforcement might...

Mr. Mangiafico accepts that comment from Ms. Kline and amends the motion.

Mr. Ledgett seconds.

All in favor. None opposed.

Chairman White is sorry that he could not respond to an audience member, but he had motion on the floor.

The audience member had a question re: the address given.

Mr. Mangiafico says that is the address for Vernon Continuing Care Homes.

Chairman White says that any aggrieved party can appeal this decision to the Superior Court within 45 days. He requests that applicant accept the minutes when approved as findings of fact.

Attorney Parkinson asks if there are separate findings of fact.

Chairman White says that has not been our practice. We are trying to clean up the minutes and use those.

An audience member asks if the applicant will be posting a bond for the blasting. With the past one, some abutters had cracked windows and people were actually knocked off their feet and she read in the paper where a Sanford blasting company had an explosion that took out a place several blocks away. She does not know where that goes.

Chairman White says that is a good point and wishes that we had addressed it.

6. ADJOURNMENT